Supreme Court, U.S.
FILED

No. 01 539 SEP 26 2001

OFFICE OF THE CLERK

In The
Supreme Court of the United States
October Term, 2001

WILLIAM J. BENSON,
Petitioner,

vs.

JOAN BAINBRIDGE SAFFORD, et. al.,
Respondents.

On Petition for Writ of Certiorari To
The United States Court of Appeals
For the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Lowell H. Becraft, Jr.
209 Lincoln Street
Huntsville, AL 35801
(256) 533-2535

Petitioner's Counsel of Record

Of Counsel:
Jeffrey A. Dickstein
P.O. Box 150124
Tulsa, OK 74115
(918) 280-9606

51pp

QUESTION PRESENTED

Whether government officials are entitled to absolute immunity when they intentionally violate the Double Jeopardy Clause of the Fifth Amendment as part of a criminal conspiracy to silence political speech.

LIST OF PARTIES

The following parties are all of the Respondents and were each sued in the district court in their individual capacities. Each has been represented by one counsel throughout the proceedings in both the district court and the court of appeals. In the court of appeals, the attorney was one of the Respondents, Scott R. Lassar.

Joan Bainbridge Safford;
Joel Bertocchi;
Fred Foreman;
Scott R. Lassar;
James B. Burns;
Kenneth Giles;
Tony S. Morton, aka Tony Smith;
Raymond Raven;
Michael A. Vlaming;

TABLE OF CONTENTS

Page

QUESTION PRESENTED i
LIST OF PARTIES ii
TABLE OF CONTENTS iii
TABLE OF AUTHORITIES iv
OPINIONS BELOW 1
JURISDICTION 1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1
STATEMENT OF THE CASE 2
REASONS FOR GRANTING THE WRIT 3
I. UNITED STATES COURTS OF APPEALS AND DISTRICT COURTS ARE DECIDING AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT . 3
CONCLUSION 5
APPENDIX A
Opinion of the Court of Appeals for the Seventh Circuit.
APPENDIX B
Opinion of the District Court of the Northern District of Illinois, Eastern Division.
APPENDIX C
Complaint filed in the district court.

TABLE OF AUTHORITIES

Page

CONSTITUTIONAL PROVISIONS:

U.S. CONST. amend. V 1

CASES:

Bradly v. Fisher,
80 U.S. 335 (1871) 3, 5

Brewer v. Dahlberg,
942 F.2d 328, 337-38 (6th Cir. 1991) 4, 5

John v. Barron,
897 F.2d 1387, 1391 (7th Cir. 1990) 3

Spalding v. Vilas,
161 U.S. 483, 40 L.Ed. 780, 16 S.Ct. 631 (1896) 3,

Stump v. Sparkman,
435 U.S. 349 (1978) 3, 5

STATUTES:

18 U.S.C. § 241 2

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1331 1

28 U.S.C. § 1343 1

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition. The opinion is unpublished and reported as *Benson v. Safford*, 2001 U.S. App. LEXIS 14845 (7th Cir. June 28, 2001).

The Memorandum Opinion and Order of the district court appears at Appendix B to the petition and is reported as *William J. Benson v. Joan Bainbridge Safford, et. al.*, 2000 U.S. Dist. LEXIS 6805 (N.D. Ill. May 17, 2000).

JURISDICTION

The date on which the United States Court of Appeals decided the case was June 28, 2001.

No petition for rehearing was filed in this case.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

The basis of jurisdiction in the district court was 28 U.S.C. §§ 1331 and 1343.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves application of the following constitutional and statutory provisions:

> No person . . . shall. . . be twice put in jeopardy of life or limb.

U.S. CONST. amend. V.

> If two or more persons conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution...[t]hey shall be fined not more than $10,000 or imprisoned not more than ten years, or both....

18 U.S.C. § 241.

STATEMENT OF THE CASE

Petitioner William J. Benson was convicted of one count of income tax evasion and two counts of failure to file tax returns. He was sentenced to serve four years on the felony, and one year on each of the misdemeanors, the sentences to run concurrently.

Benson served more than one year in prison before the Seventh Circuit reversed his convictions. Benson was convicted of the same offenses on re-trial. On re-sentencing, Benson was again given a four year sentence on the felony, a one year sentence on one of the misdemeanors, and a five year term of probation on the other misdemeanor.

Benson returned to prison, was paroled on the felony sentence, and completed parole on July 7, 1997. At this time, Benson had completely served his sentence. However, Respondents continued to exert authority over Benson, restricted his travel and speech, and demanded he provide financial information. Benson at all times objected to the travel restrictions and refused to provide any financial information claiming Fifth Amendment protection.

The Respondents sought to have Benson incarcerated for the assertion of his right to remain silent. Benson argued his probation violated the Double Jeopardy Clause of the Fifth Amendment. The district court agreed and vacated the unconstitutional sentence on April 29, 1999.

Benson filed an action alleging the violation of his right not to be put twice in jeopardy of punishment for the same offense, and a conspiracy to deprive Benson of his First Amendment right to travel, speak and associate, and his Fifth Amendment right to remain silent. Benson's complaint sought damages for Respondents' conduct from

July 30, 1997 through April 29, 1999, and specifically alleged a complete absence of jurisdiction of any of the Respondents during that time.

The Respondents moved for summary judgment which was granted on the ground that the suit was barred by the absolute immunity doctrine. The court of appeals affirmed.

REASONS FOR GRANTING THE WRIT

I. UNITED STATES COURTS OF APPEALS AND DISTRICT COURTS ARE DECIDING AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

This Court decided that society is best served by not allowing the people to sue judges, prosecutors, and others for their judicial or quasi-judicial conduct. An established exception exists when a judge, prosecutor, or other government official acts without any lawful authority. *See*, *Bradly v. Fisher*, 80 U.S. 335, 350-351 (1871); *Spalding v. Vilas*, 161 U.S. 483, 40 L.Ed. 780, 16 S.Ct. 631 (1896); *Stump v. Sparkman*, 435 U.S. 349, 356-357 (1978); *John v. Barron*, 897 F.2d 1387, 1391 (7th Cir. 1990).

Benson maintains that after he successfully completed his parole, the Respondents' lawful authority over him terminated. Therefore, Respondents are not entitled to the defense of absolute immunity.

The Seventh Circuit held that "lawful authority" equated to "subject-matter jurisdiction," and that federal courts have jurisdiction over the subject matter of federal criminal prosecutions.

The Seventh Circuit's holding is clearly erroneous because neither Congress nor any court can give itself lawful authority to violate the United States Constitution. The Constitution is the "supreme Law of the Land," and it specifically says that the government cannot twice punish Benson. No one in government has any lawful authority to do that, even though courts and government officials have "subject-matter jurisdiction" over federal criminal prosecutions.

Once Benson fully served his sentence, the Fifth Amendment deprives government officials of all lawful authority over him for the same offense. The Sixth Circuit recognized this principle in *Brewer v. Dahlberg*, 942 F.2d 328, 337-38 (6th Cir. 1991), when it said that a sentencing court loses its jurisdiction once a defendant completes his sentence.

Respondents have no arguable basis to contend they have statutory authority to twice punish Benson. Every first year law student knows that the Constitution prohibits multiple punishments for the same crime. To pretend that Respondents, several of whom are lawyers, made a good faith mistake in a complex legal situation is to ignore reality.

Since the Respondents acted without any lawful authority, they are not entitled to the absolute immunity defense as a matter of law.

While immunity serves a valuable function, it was always meant to protect government officials in the course of their legitimate employment. If it extends to protecting government officials who conspire to violate the Constitution, then it sanctions tyranny. Such cannot be the

nature, nor the scope, of the judicial immunity doctrine.

The complaint, whose allegations must be taken as true, describes conduct of the Respondents sufficient to make out a criminal conspiracy under 18 U.S.C. § 241. The district and appellate courts are extending the privilege of absolute immunity to protect criminal conduct.

Criminal conduct is outside the scope of any employment by any government official. There is, and can be, no statutory nor Constitutional authority to break the law. Thus, when the Respondents criminally conspired to violate Benson's Constitutional rights, they were outside of their employment and their lawful authority. Their conduct was even more egregious here because the object of the criminal conspiracy was to silence speech based upon its content.

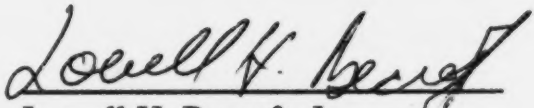
Society and the quality of government will prosper when this Court refuses to allow the judicial immunity privilege to be used to protect the conduct of those who criminally conspire to violate the Constitution.

CONCLUSION

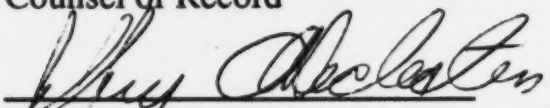
A lack of lawful authority in judicial or quasi-judicial proceedings prohibits government officials from claiming absolute immunity for their conduct. *Bradly*, *id*; *Spalding*, *id.*; *Stump*, *id.* The Fifth Amendment precludes government officials from seeking to twice punish a person for the same offense. Once Benson completed his sentence, the jurisdiction/lawful authority of the sentencing court ended, *Brewer*, *id.*, and so did the jurisdiction/lawful authority of the Respondents.

Benson's petition for writ of certiorari should be granted.

Respectfully submitted,



Lowell H. Becraft, Jr.
Counsel of Record



Jeffrey A. Dickstein
Of Counsel

September 24, 2001

APPENDIX A

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued January 12, 2001
Decided June 28, 2001

Before

Hon. Frank H.. Easterbrook, *Circuit Judge*
Hon. Diane P. Wood, *Circuit Judge*
Hon. Ann Claire Williams, *Circuit Judge*

No. 00-2752

William J. Benson, *Plaintiff-Appellant,*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division
v.	
Joan B. Safford, et.al., *Defendants-Appellees.*	No. 99 C 4748 Rebecca R. Pallmeyer, *Judge*

ORDER

William Benson filed this *Bivens* action pursuant to 42 U.S.C. § 1985 against several government officials

(collectively "defendants") for violating his First and Fifth Amendment rights. The district court granted the defendants' motion for summary judgment on absolute immunity grounds. We affirm.

I

Viewing the evidence in the light most favorable to Benson, as we must on review of a motion for summary judgment, *see Oest v. Ill. Dept. of Corr.*, 240 F.3d 605, 610 (7th Cir. 2001), the relevant facts are as follows. Benson was convicted of three counts of federal tax evasion: one felony and two misdemeanor counts. The trial court sentenced him to four years' imprisonment on the felony count and two one-year terms of imprisonment on the misdemeanor counts. All three sentences were to run concurrently. Benson appealed his conviction to this court and we granted him a new trial. *See United States v. Benson*, 941 F.2d 598 (7th Cir. 1991). By the time his appeal was decided, he had served over one year in prison -- the maximum sentence for the misdemeanor counts. On remand, Benson was retried and convicted, again, on the same three counts. The district court imposed similar prison terms, the only difference being a suspended sentence of five years of probation for the second misdemeanor count.

Benson served a few more days in prison, was paroled, and began to serve his suspended sentence of probation. While on probation, Benson and his probation officer, Tony Morton (also known as Tony Smith), had several disagreements. On one occasion in particular, Benson requested permission from Morton to go to California to speak about tax matters at a conference. (Per the special

conditions to his probation, Benson was required to seek Morton's permission before traveling out of state.) Although Morton initially denied Benson's request, he ultimately consented. As time progressed, Morton confronted Benson more than once about Benson's failure to disclose his financial information, as dictated by the special conditions to his probation. Benson refused to disclose the requisite information despite Morton's repeated insistence.

These conflicts ultimately led Morton and his supervisor, Raymond Raven, to initiate a probation revocation proceeding. In Benson's opposition to the proceedings, he argued (for the first time) that the district court's imposition of probation on the second misdemeanor count violated the Double Jeopardy Clause. The district court agreed with Benson that the imposition was unconstitutional and, accordingly, vacated his suspended sentence of probation.[1] The United States did not appeal.

Benson then filed this suit, alleging that the defendants violated several of his constitutional rights. In lieu of describing all of his claims, we list a representative few. He alleges that the defendants violated his First Amendment rights by conspiring to deprive him of his right to associate, to travel, and to speak. Benson also alleges that the defendants sought to twice punish him and revoke his probation in an effort to reprimand him for speaking about the Sixteenth Amendment and for promoting his book, which asserts that the amendment was

---

1. We make no comment on whether the district court's legal conclusion was correct.

never ratified. By way of example, he alleges that one defendant prosecutor in particular "sought and obtained an illegal term of punishment" and "requested the Court to impose travel restrictions on [him]." And, as to his probation officer, Morton, Benson claims that Morton threatened to incarcerate him if he spoke out (again) about the Sixteenth Amendment and sought also to modify the conditions of his parole to force him to "desist . . . espousing that the Sixteenth Amendment was never ratified." The district court did not reach the merits of Benson's claims because, as noted, it granted the defendants' motion for summary judgment on absolute immunity grounds.

II

We review de novo the district court's grant of summary judgment on account of absolute immunity. *Cervantes v. Jones*, 188 F.3d 805, 808 (7th Cir. 1999).

Prosecutors and probation officers are absolutely immune from suits challenging conduct intimately associated with the criminal judicial process. *Imbler v. Pachtman*, 424 U.S. 409, 430, 47 L. Ed. 2d 128, 96 S. Ct. 984 (1976) (prosecutors); *Copus v. City of Edgerton*, 151 F.3d 646, 649 (7th Cir. 1998) (probation officers). Benson concedes that the defendants' actions were sufficiently associated with the judicial phase of the criminal process such that, to the extent immunity should attach, absolute rather than qualified immunity would be appropriate. He contends, however, that "the complete lack of [personal and subject matter jurisdiction] from and after the expiration of [his] parole eliminates the . . . absolute immunity with which [the] defendants would otherwise be

cloaked." In support of his contention, he relies on cases establishing that judges who act in the "clear absence of jurisdiction" are not entitled to absolute immunity. *See, e.g., Stump v. Sparkman*, 435 U.S. 349, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978) (holding that judge who ruled on parent's petition requesting that tubal ligation be performed on a minor was entitled to absolute immunity because the court upon which the judge sat was implicitly granted subject matter jurisdiction over such petitions). A quick review of the case law in this area reveals that his reliance is misplaced.

For one, it is not clear to us what bearing the sentencing court's jurisdiction (or lack thereof) has on whether a prosecutor or probation officer should be denied absolute immunity for his or her own conduct. The proper question is whether the prosecutor or probation officer acted in the clear absence of statutory authority. *See Pfeiffer v. Hartford Fire Ins. Co.*, 929 F.2d 1484, 1491 (10th Cir. 1991) (applying clear absence of authority doctrine to prosecutors); *Schloss v. Bouse*, 876 F.2d 287, 291-92 (2d Cir. 1989) (same); *cf. Ernst v. Child & Youth Svcs. of Chester County*, 108 F.3d 486, 501 (3d Cir. 1997) (applying clear absence of authority doctrine to agency attorney). Benson did not argue that the defendants acted in the clear absence of authority nor has he alleged any facts from which such an argument could be made. Thus he cannot seek refuge under this line of cases.

Second, Benson would not benefit from an application of the clear absence of jurisdiction doctrine. Under this exception to the general rule that government officials are entitled to absolute immunity from suit challenging judicial

or quasi-judicial conduct, a judge may be held liable for conduct taken in the absence of subject matter jurisdiction. *See Mireles v. Waco*, 502 U.S. 9, 11-12, 116 L. Ed. 2d 9, 112 S. Ct. 286 (1991); *John v. Barron*, 897 F.2d 1387, 1392 (7th Cir. 1990). "Subject-matter jurisdiction refers to the *types of cases* a court is authorized to hear and every federal district court has jurisdiction over the subject matter of federal criminal prosecutions." *United States v. Sevick*, 234 F.3d 248, 251 (5th Cir. 2000) (internal quotation marks and citation omitted) (emphasis added).

The fact that one of Benson's (suspended) terms of imprisonment was later found to have been imposed in violation of the Double Jeopardy Clause does not mean that the district court did not have subject-matter jurisdiction over his trial. *See Bradley v. Fisher*, 80 U.S. 335, 357, 20 L. Ed. 646 (1871) ("[The] erroneous manner in which [the court's] jurisdiction was exercised, however it may have affected the validity of the act, did not . . . render the defendant liable to answer in damages for it at the suit of the plaintiff, as though the court had proceeded without having any jurisdiction whatever.") cited in *Stump*, 435 U.S. at 359; cf. id. at 352 ("If a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction [not in the clear absence thereof] and would be immune."); *United States v. Lawuary*, 211 F.3d 372, 380 (7th Cir. 2000) (Easterbrook, J., concurring) (stating that laws affecting the maximum length of sentences "are unrelated to subject-matter jurisdiction.") To hold otherwise would require government officials to defend every exercise of legal judgment ultimately determined to be improper and would,

therefore, defeat the purpose of absolute immunity.

III

For these reasons, we find Benson's argument unavailing and AFFIRM the judgment of the district court.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIAM J. BENSON,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 99 C 4748
	)	Judge Rebecca R.
JOAN BAINBRIDGE SAFFORD;	)	Pallmeyer
JOEL BERTOCCHI; FRED	)	
FOREMAN; SCOTT R. LASSAR;	)	
JAMES B. BURNS; KENNETH	)	
GILES; TONY S. MORTON, a/k/a	)	
TONY SMITH; RAYMOND	)	
RAVEN; MICHAEL A.	)	
VLAMING,	)	
Defendants.	)	
	)	

MEMORANDUM OPINION AND ORDER

Plaintiff William J. Benson ("Benson") brings this *Bivens* action against current and former federal prosecutors Joan Bainbridge Safford ("Safford"), Joel Bertocchi ("Bertocchi"), Fred Foreman ("Foreman"), Scott R. Lassar ("Lassar"), James B. Burns ("Burns"); federal probation officers Tony S. Morton, a/k/a Tony Smith ("Smith"), Raymond Raven ("Raven"), Michael A.

Vlaming ("Vlaming"); and Financial Litigation Agent Kenneth Giles ("Giles") (collectively "Defendants"). Plaintiff was convicted on two misdemeanor counts of willful failure to file a tax return and one felony count of willful tax evasion. Defendants were involved in enforcing the terms of his probation when the district court judge vacated his conviction and ordered him released. Now before the court, in his two-count complaint, Benson alleges that Defendants (1) violated his Fifth Amendment right against double jeopardy and (2) conspired to deprive him of his First Amendment rights of speech, travel, and association. Defendants move for summary judgment on three grounds: (1) absolute and qualified immunity, (2) *res judicata*, and (3) waiver for failure to raise the double jeopardy issue trial. For the reasons discussed below, the court grants the Defendants' motion for summary judgment.

FACTUAL BACKGROUND

In December 1989, a jury convicted Benson of two misdemeanor counts of willful failure to file a federal tax return, 26 U.S.C. § 7203, and one felony count of willful tax evasion, 26 U.S.C. § 7206. (Plaintiff's Local Rule 56.1(b) Response to Defendants' Local Rule 56.1 Statement of Material Facts In Support of Summary Judgment ("56.1(b) Resp.") ¶ 1.) Judge Paul E. Plunkett of this court sentenced Benson to one-year terms on counts I and II (misdemeanors), and a four-year term on count III (felony). (Defendants' Local Rule 56.1 Statement of Material Facts in Support of Summary Judgment ("56.1 Statement") ¶ 2.) All three jail sentences were to run concurrently. (*Id.* ¶ 3.)

Benson began serving his sentence on May 29, 1990. *Benson v. United States*, 969 F. Supp. 1129, 1130 (N.D. Ill. 1997). He was scheduled to be paroled on September 27, 1991.[1] (*Id.*) Benson appealed and on September 3, 1991, the Seventh Circuit reversed Benson's convictions and remanded for a new trial on all charges. *United States v. Benson*, 941 F.2d 598 (7th Cir. 1991), as amended, 957 F.2d 301 (7th Cir. 1992).[2] On September 4, 1991, the day after the opinion was issued, Defendant was released on bond. (Defs.' 56.1 Statement ¶ 5.) Up until that point, Benson had served 467 days in federal prison. (*Id.*)

In February 1994, Benson was retried and convicted on the same three counts. (*Id.*¶ 6.) Judge John F. Grady sentenced Benson to the same concurrent terms of one year for his count II misdemeanor, and four years for his count III felony conviction. (Pl.'s 56.1(b) Resp. ¶ 7.) For the count I misdemeanor, however, unlike Judge Plunkett, Judge Grady sentenced Benson to five years probation to run consecutive to the sentences imposed on count II and III. (Defs.' 56.1 Statement ¶¶ 8, 10.) Judge Grady also imposed a criminal fine together with the costs of prosecution, the latter totaling $4,083, pursuant to 26

---

1. Defendant was sentenced under pre-sentencing guidelines regime, and thus became eligible for parole after serving one third of his sentence, with credit for "good time."

2. The Seventh Circuit held that the district court abused its discretion in admitting portions of opinion testimony from an Internal Revenue agent. *United States v. Benson*, 941 F.2d 598, 602 (7th Cir. 1991).

U.S.C. § § 7201, 7201. (*Id.* ¶ 9.) Benson and his criminal defense attorney never claimed during his sentencing hearing before Judge Grady that because Benson had already served more than 365 days in jail for his three concurrent sentences, the double jeopardy clause precluded the Judge Grady from entering a probation sentence on the count I. (*Id.* ¶ 10.) Benson did, however, appeal his second conviction with respect to Count II and III. The Seventh Circuit affirmed his second conviction and sentence, rejecting Benson's sufficiency of the evidence and jury instruction arguments. *United States v. Benson*, 67 F.3d 641, 642 (7th Cir. 1995). Notably, neither Benson nor his counsel challenged his sentence on count I nor raised any double jeopardy arguments. (Defs.' 56.1 Statement ¶ 11.)

Benson began serving his second four-year sentence on November 10, 1994. (*Id.* ¶ 12.) Because he had already served 467 days, and because his sentence was imposed under pre-guideline rules, Benson only served an additional 18 days in prison before being paroled in November 28, 1994.[3] (*Id.*) Shortly after being paroled,

---

3. In return for his early release from prison, Benson agreed to certain conditions, including that he (1) would remain within the limits of the Northern District of Illinois and not leave the jurisdiction without permission of his parole officer; (2) would not violate any law; (3) would not associate with persons engaged in criminal activity; (4) would submit a complete and truthful monthly report as required by his parole officer; and (5) would make a diligent effort to satisfy the court's assessment of the costs of his prosecution and upon

(continued...)

Benson requested permission from his parole officer, Officer Smith, to travel to California to speak on the invalidity of the Sixteenth Amendment. *Benson v. United States*, 969 F. Supp. 1129, 1131 (N.D. Ill. 1997). Officer Smith denied permission because Benson had failed to comply with various conditions of his parole. *Id.* Specifically, Officer Smith asserted that Benson had (1) failed to repay in full his assessment of costs attributable to his prosecution and (2) failed to provide certain financial information as required by the conditions of his parole. *Id.* Benson persisted with his requests, however, and on November 9, 1995, Officer Smith acceded in Benson's request to travel outside of the Northern District of Illinois as long as Benson adhered to his parole conditions. *Id.*

Notwithstanding the fact that he was granted permission to leave the Northern District of Illinois, Benson, in November of 1996, filed a two-count *Bivens* suit against Officer Smith, Deputy U.S. Attorney Safford, and several other individuals alleging unconstitutional acts associated with his parole. *See Benson v. United States*, 969 F. Supp. 1129, 1131 (N.D. Ill. 1997). In Count I, Benson alleged that Officer Smith violated his First Amendment rights by threatening him with incarceration if he spoke out against the Sixteenth Amendment or traveled beyond the Northern District of Illinois to give

---

3. (...continued)
request, would provide financial information relevant to the payment of the assessment. *Benson v. United States*, 969 F. Supp. 1129, 1130 (N.D. Ill. 1997).

speeches regarding the Sixteenth Amendment. *Id.* at 1131. In Count II, Benson alleged that Officer Smith, Deputy U.S. Attorney Safford, and several others, had engaged in three conspiracies under 42 U.S.C. § 1985: (1) releasing grand jury materials illegally in an attempt to prejudice the jury against Benson; (2) knowingly and falsely representing to the trial judge that Benson had more time to serve on his original four-year sentence; and (3) knowingly and falsely denying Benson his right to travel and speak out on matters of federal corruption by threatening Benson with incarceration. *Id.* Judge Alesia granted summary judgment in favor of the defendants. *Id.* at 1132. Rejecting Benson's constitutional allegations on numerous grounds, including absolute and qualified immunity, Judge Alesia wrote:

> Because [Officer Smith] bore quasi-judicial responsibilities in deciding whether or not to allow Benson a reprieve from the travel restrictions imposed on him as conditions of parole and in enforcing the parole conditions, he should be accorded the same protection that is accorded judges and parole board members. Consequently, the court finds that [Officer Smith] is entitled to absolute immunity for his actions in enforcing the terms of Benson's parole, including his decision to deny Benson permission to travel outside of the Northern District of Illinois.

Id. at 1133-34.

Benson's parole for his four-year count III sentence lasted until July 30, 1997, at which time Benson's five-year probation sentence for count I began. (*Id.* ¶ 13.) On August

1, 1997, Benson began serving his five-year probation term for count I. (*Id.*) In February 1998, less than seven months into Benson's probation, Defendant Deputy U.S. Attorney Safford filed a motion to have Benson's probation revoked for various probation violations, including Benson's failure to report certain financial information.[4] (*Id.* ¶ 14.) In October 1998, during a probation revocation hearing before Judge Grady, Benson argued for the first time that Judge Grady's earlier imposed probation sentence violated Benson's Fifth Amendment double jeopardy rights. (*Id.* ¶ 15.) Specifically, Benson argued that the probation sentence on count I was improper because he had already served a one-year term associated with count I while awaiting the resolution of his first appeal.[5] (*Id.*) On March 18, 1999, approximately twenty months into Benson's probation, Judge Grady agreed with Benson and vacated his probation. (*Id.* ¶ 17.) Judge Grady wrote:

> The critical fact in this court's view is that the sentence defendant received from Judge Plunkett on Count I was concurrent with the four year sentence he received on Count III, so that, in serving 467

---

4. While the record reveals that a condition of Benson's parole required him to provide such financial information, the record is unclear as to exactly what were the conditions of Benson's probation.

5. Judge Plunkett's initial sentence ordered Benson to serve his three sentences concurrently. While awaiting his initial appeal, Benson had served 467 days. Thus, according to Benson, he had served out his 1-year, or 365-day, term associated with count I.

> days on Judge Plunkett's sentence, the defendant necessarily served the 365 days imposed on Count I.
>
> . . .
>
> Much time and effort would have been saved, of course, had Benson raised his Double Jeopardy argument before he was resentenced. However, an illegal sentence can be challenged at any time, and this court has no alternative but to vacate the probationary sentence imposed on Count I on April 29, 1994.

(Judge Grady's March 18, 1999 Order, Ex. A to Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment ("Pl.'s Opp'n").)

Soon thereafter, Benson brought this two-count complaint under the authority of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 29 L. Ed. 2d 619, 91 S. Ct. 1999 (1971), seeking over $8 million from the various probation officers and prosecutors involved in either the supervision of his probation and/or the attempt to have it revoked. In Count I, Benson alleges violations of his Fifth Amendment rights against double jeopardy because: (1) U.S. Attorney Lassar and Deputy U.S. Attorney Safford filed numerous pleadings seeking to revoke Benson's probation and objected to Benson's motion to vacate (Complaint ("Compl.") PP 38, 44, 49); (2) U.S. Attorney Lassar, Deputy U.S. Attorney Safford, and Assistant U.S. Attorney Bertocchi appeared and prosecuted Benson during a probation revocation hearing seeking to imprison him for alleged probation violations (Compl. PP 46, 48); (3)

between August 1, 1997 and October 16, 1998, Officer Smith supervised Benson as if he were on probation (Compl. P 36); (4) Officer Smith, Officer Raven, and Officer Vlaming actively sought to revoke Benson's probation and have him sentenced to jail by preparing a special report regarding Benson's probation violations and testifying at Benson's probation revocation hearing (Compl. P 37, 47-48); and (5) U.S. Attorney Lassar, Deputy U.S. Attorney Safford, Officer Smith, and Financial Litigation Agent Kenneth Giles collected $ 3,703.00 of the total $ 4,083.00 amount owed for the costs of prosecution which was imposed as a special condition of Benson's probation. (Compl. P 50.)

In Count II, Benson alleges that, by supervising his probation and/or subsequently seeking to revoke it without the requisite jurisdictional authority, Defendants conspired to deprive him of his First Amendment rights to speak, travel, and associate. (Compl. P 59.) Benson's First Amendment count is completely derivative of his Fifth Amendment count in that it is premised entirely on his probationary conditions. The court will discuss the counts contemporaneously.

Defendants now move for summary judgment, setting forth three defenses. First, Defendants allege that they are entitled to absolute or qualified immunity for their action. (Defendants' Memorandum in Support of Summary Judgment ("Defs.' Memo.") at 1.) Plaintiff contests this point. He concedes that the applicable immunity would be absolute, and not qualified, but urges that Defendants are not entitled to an immunity defense because they acted in "complete absence of jurisdiction." (Pl.'s Opp'n at 1.)

Second, Defendants assert that the First Amendment claim is barred by *res judicata* in that the same claim was previously litigated in the earlier case of *Benson v. United States*, 969 F. Supp. 1129 (N.D. Ill. 1997.) (J. Alesia). (Defs.' Memo. at 1.) Plaintiff counters arguing that "his causes of action embraced in the complaint before this Court hadn't even arisen at the time the first complaint was heard," and thus *res judicata* does not apply. (Pl.'s Opp'n at 2.)

Third, Defendants assert that Plaintiff has waived his right to seek damages because he had not previously objected to the imposition of his illegal sentence. (Defs.' Memo at 1.) Plaintiff asserts that "an illegal sentence can be challenged at any time," and thus "there is no waiver as a matter of law." (Pl.'s Opp'n at 2.)

For reasons set forth below, the court finds Defendants enjoy absolute immunity, and need not reach the remaining defenses.

DISCUSSION

Defendants claim that they are absolutely immune from suit. (Defs.' Memo., at 4-10.) Courts employ a "functional approach" to determine whether a governmental official is entitled to immunity. *Buckley v. Fitzsimmons*, 509 U.S. 259, 269, 125 L. Ed. 2d 209, 113 S. Ct. 2606 (1993). Under this approach, courts examine the "nature of the function performed" by the official when the alleged constitutional infringement occurred, not the title of the official in question. *Wilson v. Kelkhoff*, 86 F.3d 1438, 1443 (7th Cir. 1996). If the actions of an official are "quasi-judicial" in nature or "intimately associated with the judicial process itself," absolute immunity is appropriate.

See, e.g., Imbler v. Pachtman, 424 U.S. 409, 423-24, 427, 47 L. Ed. 2d 128, 96 S. Ct. 984 (1976) (prosecutors); *Buckley v. Fitzsimmons*, 509 U.S. 259, 270, 125 L. Ed. 2d 209, 113 S. Ct. 2606 (1993) (prosecutors); *Walrath v. United States*, 35 F.3d 277, 280-81 (1994) (probation officers)("activities which are 'inexorably connected with the execution of parole revocation procedures and are analogous to judicial action' are entitled to absolute immunity." (quoting *Trotter v. Klincar*, 748 F.2d 1177, 1182-83 (7th Cir. 1984).) Defendants maintain that both their supervision and their attempted revocation of Benson's probation were quasi-judicial activities for which they are entitled to absolute immunity. (Defs.' Memo., at 4-10.)

Plaintiff concedes that the nature of Defendants' conduct falls within the prosecutorial or quasi-judicial category covered by absolute immunity. (Pl.'s Opp'n at 2.) Specifically, Benson agrees that the "acts of the Defendants during trial and sentencing, even including the illegal sentencing" are ordinarily acts for which Defendants enjoy absolute immunity. (*Id.* at 4.) Plaintiff asserts, however, that an exception to absolute immunity exists when an official has acted in the "clear absence of all jurisdiction." (Id. at 2-3 (quoting *Bradley v. Fisher*, 80 U.S. 335, 351, 20 L. Ed. 646 (1871)). Benson contends that the probationary sentence Judge Grady imposed upon him, which was later vacated, violated his double jeopardy rights and thus was entered in the "clear absence of jurisdiction." (Pl.'s Opp'n at 3.) Benson thus concludes that all of Defendants' alleged acts taken after August 1, 1997 (the first day of Benson's probationary sentence) pursuant

to this faulty sentence, were also conducted in the "clear absence of authority." (Id. at 4.)

Plaintiff supports his claim by citing *Bradley*, 80 U.S. at 351-52, *Stump v. Sparkman*, 435 U.S. 349, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978), and *John v. Barron*, 897 F.2d 1387 (7th Cir. 1990), all cases which articulate the general rule that judicial acts performed in the "clear absence of jurisdiction" are not protected by absolute immunity. *Bradley*, 80 U.S. at 351-52; *Stump*, 435 U.S. at 356-57; *John*, 897 F.2d at 1391. While indeed these case do enunciate this rule, these cases all reach holdings that are ultimately of no assistance to Plaintiff. For example, in *Bradley*, the Supreme Court held that a judge was immune for his judicial acts. *Bradley*, 80 U.S. at 351-52. The Court reasoned that although the judge's acts were performed in excess of his jurisdiction, they were not performed in the clear absence of jurisdiction. *Id.* The Court illustrated the distinction between lack of jurisdiction and excess of jurisdiction with the following examples:

> if a probate court, invested only with authority over wills and the settlement of estates of deceased persons, should proceed to try parties for public offences, jurisdiction over the subject of offences being entirely wanting in the court, and this being necessarily known to its judge, his commission would afford no protection to him in the exercise of the usurped authority. But if on the other hand a judge of a criminal court, invested with general criminal jurisdiction over offences committed within a certain district, should hold a particular act to be a public offence, which is not by the law made

> an offence, and proceed to the arrest and trial of a party charged with such act, or should sentence a party convicted to a greater punishment than that authorized by the law upon its proper construction, no personal liability to civil action for such acts would attach to the judge, although those acts would be in excess of his jurisdiction, or of the jurisdiction of the court held by him, for these are particulars for his judicial consideration, whenever his general jurisdiction over the subject-matter is invoked.

Id. at 352. Thus, where jurisdiction over the subject matter is vested in a judge, the manner and extent in which the jurisdiction shall be exercised are matters for the judge's determination; the availability of absolute immunity does not hinge on the correctness of these determinations. *Id.* 351-52.

Likewise in *Stump*, the Court held that a state trial judge had not acted in the absence of jurisdiction when he approved the plaintiff's mother's petition to allow a tubal ligation to be performed upon the plaintiff. *Stump*, 435 U.S. at 357. The Court stated:

> A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the "clear absence of all jurisdiction."
>
> . . .
>
> "This erroneous manner in which [the court's] jurisdiction was exercised, however it may have affected the validity of the act, did not make the act

> any less a judicial act; nor did it render the defendant liable to answer in damages for it at the suit of the plaintiff, as though the court had proceeded without having any jurisdiction whatever . . . ."

Id. at 356, 359 (quoting *Bradley*, 80 U.S. at 357.) A judge will not be deprived of immunity because his or her action was wrong, malicious, or in excess of his authority.

Finally, in *John*, the Seventh Circuit held that a state trial judge had absolute immunity from liability for his alleged violation of the plaintiff's right to a fair trial. Plaintiff alleged that the judge had unlawfully conspired to deprive him of his rights when he granted the petition of two other trustees to remove him from his position as trustee of a foundation. Because the judge's actions were undertaken in his judicial capacity and were within the subject matter jurisdiction of the court, the Seventh Circuit upheld dismissal of plaintiff's complaint. *John*, 897 F.2d at 1391-392.

Plaintiff argues that inasmuch as he had already served out his count I misdemeanor sentence, Judge Grady lacked jurisdiction to impose any additional sentence for that count; consequently, that sentence was void. (Pl. Opp'n., at 5.)[6] Plaintiff contends when he was released from parole, and his probation for count I began, "neither the Probation Department, the Department of Justice, nor the Court had any jurisdiction whatsoever over Plaintiff." (*Id.* at 6.) Thus,

---

6. Notably, Judge Grady himself is not a defendant in this case. Thus, the case law concerning the absolute immunity available to a judge is applicable only by analogy.

in supervising his probation, and later seeking to have his probation revoked, Defendants, like Judge Grady, acted in the absence of the jurisdictional authority. (*Id.* at 6-7.) By acting pursuant to Judge Grady's jurisdictionally void probation sentence, Plaintiff contends Defendants forfeited their absolute immunity from suit. (*Id.* at 7.)

Plaintiff's argument lacks merit. At the center of Plaintiff's argument is the assumption that a sentence later vacated on the account of double jeopardy concerns was initially imposed in the clear absence of authority. While federal district courts are courts of limited jurisdiction, it is well within the jurisdiction of a federal district judge to try criminal cases and impose sentences. *Giardono v. Jones*, 867 F.2d 409, 413 (7th Cir. 1989). Judge Grady had subject-matter jurisdiction to hear Plaintiff's case and similarly had subject matter jurisdiction to sentence him. The fact that Judge Grady later determined he had made an error, and consequently vacated the probation sentence, does not necessitate a finding that he initially acted in "clear absence of jurisdiction." To the contrary, it is well settled that "a judge will not be deprived of immunity because the action he took was in error. . . ." *John v. Barron*, 897 F.2d 1387, 1391 (7th Cir. 1990) (citing *Stump v. Sparkman*, 435 U.S. 349, 356-57, 55 L. Ed. 2d 331, 98 S. Ct. 1099 (1978).

The cases Plaintiff relies on do not support the inference that a sentence placing a defendant in double jeopardy is void because the judge lacks the authority to hear the case. At most, they support the inference that a sentence that violates the double jeopardy clause is void because it is in excess of jurisdiction; that is, because the

sentence exceeds the limits of the judge's discretion in the exercise of the court's subject-matter jurisdiction. *Bradley*, 80 U.S. at 351-52; *Stump*, 435 U.S. at 356-57, n.7; *John*, 897 F.2d at 1391. The Bradley Court makes this point more or less explicitly: the probate judge who hears a criminal case acts in the absence of jurisdiction; but the criminal law judge who sentences "a party convicted to a greater punishment than that authorized by the law" acts in excess of jurisdiction. *Bradley*, 80 U.S. at 352.

At worst, therefore, Judge Grady's probation sentence exceeded his jurisdiction. The suggestion that this fact renders the Defendants' conduct unconstitutional is even weaker. *Id.*; *Stump*, 435 U.S. at 356-57; *John*, 897 F.2d at 1391. Plaintiff has not explained how the fact the judge imposed an improper sentence (if he did) would establish that Defendants acted improperly in carrying out the court's orders. Indeed, governmental officials, such as prosecutors, and probation officers who cannot be punished for seeking to enforce a facially valid criminal sentence, especially where the defendants' enforcement efforts all occurred before the criminal sentence is ultimately vacated. *See Henry v. Farmer City State Bank*, 808 F.2d 1228, 1238-39 (7th Cir. 1986) (non-judicial officials have absolute immunity in executing a facially valid court order); *Patton v. Przybylski*, 822 F.2d 697, 699 (7th Cir. 1987) ("Policeman can rely on the warrant - he doesn't have to cross-examine the judicial officer who issued it."); *Carver v. Heisner*, 986 F.2d 1424, (7th Cir. 1993) ("Generally, an arrest made pursuant to a facially valid warrant precludes section 1983 action for false arrest, false imprisonment, or malicious prosecution, even if the arrest warrant is later

determined to have an inadequate factual foundation.") (citing *Juriss v. McGowan*, 957 F.2d 345, 350 (7th Cir.1992).)

All of the alleged wrongful acts occurred before Judge Grady vacated the probation sentence.[7] Had the alleged acts occurred after Judge Grady vacated the probation sentence, the outcome of this case might be different. But such are not the facts of the case before the court. To the extent that Defendants' alleged wrongful acts were executed pursuant to Judge Grady's facially valid probationary sentence, the court finds that Defendants are absolutely immune from suit. Defendants' motion for summary judgment is granted.

CONCLUSION

For the reasons discussed above, the court grants summary judgment (Doc. 8-1) in favor of Defendants.

ENTER:

Dated: May 16, 2000

/s/
REBECCA R. PALLMEYER
United States District Judge

---

7. In fact, Judge Grady agreed with the United States that Benson had indeed violated the conditions of his probation.

Received
July 21, 1999
Michael W. Dobbins, Clerk
United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIAM J. BENSON,	) Case No. 99 C 4748
	) Jury Trial Demanded
Plaintiff,	)
	) Judge Kennelly
-vs-	) Magistrate Judge
	) Rosemond
JOAN BAINBRIDGE SAFFORD; JOEL BERTOCCHI; FRED FOREMAN; SCOTT R. LASSAR; JAMES B. BURNS; KENNETH GILES; TONY S. MORTON, aka TONY SMITH; RAYMOND RAVEN; MICHAEL A. VLAMING,	)
Defendants.	)

COMPLAINT FOR DAMAGES

1. This is an action for damages consequent upon the violation of Plaintiff's First and Fifth Amendment rights and is brought under the authority of *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*,

Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 29 L.Ed.2d 619, 91 S.C. 1999 (1971), and 42 U.S.C. Section 1985.

2. This Court has jurisdiction to entertain this complaint under 28 U.S.C. Sections 1331 and 1343.

3. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(b)(2).

4. The Plaintiff is a citizen of the State of Illinois, United States of America, and is a resident of the City of South Holland, County of Cook.

5. At all times material to this complaint, Defendant Joan Bainbridge Safford was a First Assistant United States Attorney and/or Deputy United States attorney, and was acting under color of federal law.

6. At all times material to this complaint, Defendant Joel D. Bertocchi was an Assistant United States Attorney and was acting under color of federal law.

7. At all times material to this complaint, Defendant Fred Foreman was a United States Attorney and was acting under color of federal law.

8. At all times material to this complaint, Defendant Scott R. Lassar was a United States Attorney and was acting under color of federal law.

9. At all times material to this complaint, Defendant James B. Burns was a United States Attorney and was acting under color of federal law.

10. At all times material to this complaint, Defendant Kenneth Giles was a Financial Litigation Specialist, was employed within the United States Attorney's office, and was acting under color of federal law.

11. At all times material to this complaint, Defendant

Tony S. Morton, aka Tony Smith, was a United States Probation Officer and was acting under color of federal law.

12. At all times material to this complaint, Defendant Raymond Raven was a Supervising United States Probation Officer and was acting under color of federal law.

13. At all times material to this complaint, Defendant Michael A. Vlaming was a Supervising United States Probation Officer and was acting under color of federal law.

14. Plaintiff sues each named Defendant in his or her individual, personal capacity.

15. Plaintiff is the author of a book entitled The Law That Never Was, which documents that fewer than the three-quarters of the States then in the Union properly voted for ratification of the Sixteenth Amendment.

16. At all times herein mentioned, Plaintiff was actively involved in promoting his book and expressing his opinion that the Sixteenth Amendment had not been properly ratified.

17. On or about December 7, 1989, Plaintiff was found guilty of violating 26 U.S.C. Section 7203 for the year 1980 (Count 1), of violating 26 U.S.C. Section 7203 for the year 1981 (Count 2), and of violating 26 U.S.C. Section 7201 for the year 1981 (Count 3) in *United States v. Benson*, Case Number 87 CR 278, (N.D.Ill.E.D.).

18. On or about November 21, 1989, Plaintiff was sentenced to serve one year in custody on Count 1, one year in custody on Count 2, and four years in custody on Count 3, all three sentences to run concurrently.

19. On May 5, 1987, Plaintiff spent one day in federal custody in connection with the above mentioned criminal prosecution.

20. On November 22, 1988, Plaintiff spent one day in federal custody in connection with the above mentioned criminal prosecution.

21. Between May 29, 1990 and September 4, 1991, Plaintiff was incarcerated for 464 days in a federal facility in Rochester, Minnessota in connection with the above mentioned criminal prosecution.

22. On August 27, 1991, the Seventh Circuit Court of Appeals reversed the Plaintiff's conviction.

23. On September 4, 1991, Plaintiff was released from his incarceration.

24. Plaintiff was retried and found guilty of the same three offenses for which he was previously incarcerated.

25. On April 29, 1994, Plaintiff was sentenced to serve one year in custody on Count 2, and four years in custody on Count 3.

26. Imposition of sentence was suspended on Count 1, and Plaintiff was sentenced to five years of probation, to commence upon his release from confinement.

27. Special conditions of probation were that Plaintiff file timely federal income tax returns for each year during the period of probation, that Plaintiff furnish to the probation office at least once a year, a financial statement outlining gross income and any tax deductible expenses claimed, and that Plaintiff pay costs of prosecution in the amount of $4,083.00.

28. On November 10, 1994, Plaintiff was incarcerated in a federal facility at Fort Worth, Texas.

29. On November 28, 1994, Plaintiff was paroled on Count 3 and released from federal incarceration.

30. The Certificate of Parole issued to Plaintiff provided parole was to continue until July 30, 1997.

31. The parole termination date was erroneously calculated and failed to provide Plaintiff with credit for good time served.

32. Plaintiff successfully fulfilled the terms of his parole, and the same expired no later than July 30, 1997.

33. On March 18, 1999, the United States District Court, the Honorable John F. Grady, United States District Court Judge, entered an order declaring the sentence of probation on Count 1 entered on April 29, 1994 was illegal and vacated said sentence.

34. From no later than July 30, 1997, through April 28, 1999, all acts of the Defendants, and each of them, complained about herein below, were performed by said Defendants in the complete absence of any jurisdiction.

COUNT 1

Bivens Action for Violation of Fifth Amendment Prohibition Against Double Jeopardy

35. Plaintiff incorporates and realleges paragraphs 1 through 34 hereat as if set forth in full.

36. Between August 1, 1997 through October 16, 1998, Defendant Tony Morton, aka Tony Smith, supervised Plaintiff as if he were on probation, requiring Plaintiff to visit him at his office, visiting Plaintiff at his home, requiring Plaintiff to fill out monthly probation report forms, taking urine samples, and restricting Plaintiff's travel.

37. On or about December 3, 1997, Defendants Tony

Morton, aka Tony Smith and Raymond Raven prepared a Special Report To request a Rule to Show Cause why Probation Should Not Be Revoked.

38. On or about February 9, 1998, Defendants Joan Bainbridge Safford and Scott R. Lassar prepared and caused to be filed with the United States District Court A Rule To Show Cause Why Probation Should Not Be Revoked.

39. A basis for requesting that Plaintiff's probation be revoked was that he exercised his Fifth Amendment right to remain silent when he invoked the Fifth Amendment on various questions called for on the monthly probation report forms.

40. On or about July 22, 1998, Plaintiff prepared and filed a Response To Motion For Rule To Show Cause Why Probation Should Not Be Revoked and Cross-Complaint.

41. On or about September 10, 1998, Plaintiff prepared and filed a Supplement To Response To Motion For Rule To Show Cause Why Probation Should Not Be Revoked and Cross-Complaint.

42. On or about October 1, 1998, Plaintiff retained counsel to represent him in the probation revocation proceedings.

43. On or about October 7, 1998, Plaintiff filed a Motion To Dismiss Rule To Show Cause Why Probation Should Not Be Revoked on the grounds that the sentence to five years of probation on Count 1 was in violation of the Double Jeopardy Provisions of the Fifth Amendment to the United States Constitution.

44. On or about October 2, 1998, Defendants Joan Bainbridge Safford and Scott R. Lassar prepared and

caused to be filed with the United States District Court its Government's Response to Defendant's Fifth Amendment Claims in which it was alleged Plaintiff did not have a Fifth Amendment right to remain silent.

45. On or about October 19, 1998, a hearing on the Order to Show Cause was held before the United States District Court.

46. Defendants Joan Bainbridge Safford and Joel D. Bertocchi on behalf of Defendant Scott R. Lassar, appeared at said hearing and prosecuted Plaintiff.

47. Defendant Michael A. Vlaming testified against Plaintiff at said hearing.

48. Defendants Scott R. Lassar, Joan Bainbridge Safford, Joel D. Bertocchi, Tony Morton, aka Tony Smith, Raymond Raven and Michael A. Vlaming, each actively sought to have Plaintiff's probation revoked and sought to have him sentenced to a term of imprisonment on Count I.

49. On or about November 9, 1998, Defendants Scott R. Lassar, Joan B. Safford and Joel D. Bertocchi prepared and caused to be filed its Government's Response to Defendant's Double Jeopardy Claims in which they contended that the sentence to probation on Count I did not violate the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

50. From on or about November 28, 1994 through April 28, 1999, Defendants Scott R. Lassar, Joan B. Safford, Tony Morton, aka Tony Smith and Kenneth Giles attempted to and did collect $3703.00 of the aforesaid $4,083.00 costs of prosecution imposed as a special condition of probation.

51. At all times herein mentioned, the right to remain

silent and the right to be not twice punished for the same offense were both clearly established constitutional rights of which a reasonable person would have known.

52. At all times herein mentioned, 18 U.S.C. Section 3561(a)(3) specifically prohibited the sentencing to a term of probation where a person has been sentenced to a term of imprisonment for the same offense.

53. At all times herein mentioned, the prohibition set forth in 18 U.S.C. Section 3561(a)(3) was a clearly established statutory provision of which a reasonable person would have known.

54. Each of the acts of Defendants herein above alleged were committed in violation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and 18 U.S.C. Section 3561(a)(3).

55. Plaintiff has been subjected because of the above recited acts, to the deprivation by the Defendants, and each of them, under color of law, of rights, privileges and immunities secured to him by the Constitution and Laws of the United States, and particularly his right not to be twice punished for the same offense under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution and 18 U.S.C. Section 3561(a)(3).

56. As a direct consequence and result of the acts of Defendants hereinabove complained of Plaintiff was deprived of his rights under the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, was deprived of his liberty for a substantial period of time, suffered much anxiety and distress which worsened his previous poor medical condition, suffered fear of death likely to result from reincarceration, expended time and

expense in having to report to the probation office of Defendant Tony Morton, aka Tony Smith, and had to expend time and money in Defending himself against reincarceration.

57. Each of the acts of Defendants, and each of them, were done knowingly, maliciously, willfully and wantonly in an effort to punish Plaintiff for speaking about the Sixteenth Amendment and for promoting his book.

WHEREFORE, Plaintiff requests judgment be entered in his favor against these Defendants, jointly and severally, as follows:

a. $5,000.00 per day from August 1, 1997 through April 2, 1999, a total of $3,045,000.00, as compensatory damages for the violation of his rights under the Fifth Amendment to the United States Constitution;

b. Special damages in the amount of $7,265.90 paid to counsel to defend the Order to Show Cause;

c. Special damages in the amount of $3,703.00 paid as costs of prosecution.

d. For the sum of $5,000,000.00 as punitive damages.

e. For an award of all costs, expenses and attorney's fees incurred in prosecuting this action;

f. For such other and further relief as the Court Deems just and equitable.

COUNT 2

Conspiracy Action To Deprive Plaintiff Of His First Amendment Rights To Associate and Freedom of Speech

58. Plaintiff incorporates and realleges paragraphs 1 through 34 hereat as if set forth in full.

59. From on or about September 3, 1991 and continuing

through and including April 28, 1999, Defendants, and each of them, did unlawfully and knowingly agree, conspire, combine and confederate with each other, to deprive Plaintiff of his First Amendment rights to associate, to travel and to freedom of speech.

60. Plaintiff only seeks damages for that portion of the conspiracy from August 1, 1997 through April 28, 1999.

61. The object of the conspiracy was for Defendants to use and abuse the color of their office and the judicial process to illegally prevent Plaintiff from associating with those with a political interest in the issues set forth in Plaintiff's book, to prevent Plaintiff from traveling to associate, and to prevent Plaintiff from speaking about the issues set forth in Plaintiff's book.

62. In order to achieve the objects of the conspiracy, the Defendants, and each of them, used the following means and methods:

63. Defendant Joan Bainbridge Safford falsely represented to the Court that Plaintiff's conviction had been reversed and remanded for new trial.

64. Defendant Joan Bainbridge Safford falsely represented that Plaintiff's counsel had moved without providing a forwarding address.

65. Proceeding without affording Plaintiff the benefit of counsel, Defendant Joan Bainbridge Safford sought and obtained an order for bail pending appeal when there was no appeal then pending, which order restricted Plaintiff's travel.

66. Defendants sought and obtained an illegal term of punishment in violation of the Double Jeopardy clause of the Fifth Amendment to the United States Constitution.

67. Defendants sought to modify the terms of Plaintiff's probation to prohibit him from speaking about the Sixteenth Amendment.

68. Defendants sought to have Plaintiff incarcerated for violating the terms of his probation as a result of Plaintiff exercising his right to remain silent as guaranteed by the Fifth Amendment to the United States Constitution after having previously stipulated in open court that Plaintiff had a valid Fifth Amendment right to remain silent regarding his financial condition.

69. Defendants attempted to have Plaintiff's term of probation commence August 1, 1997 rather than the correct date of November 28, 1994 in order to keep him under their control for a longer period of time.

70. In order to further the objects and purposes of this conspiracy, Defendants, and each of them, did commit and cause to be committed the following acts, among others, within the Northern District of Illinois, and elsewhere.

71. On September 3, 1991, Defendants Joan Bainbridge Safford and Fred Foreman filed its Government's Motion for Release Pending Appeal in United States v. Benson, 87 CR 278).

72. On September 3, 1991, Defendant Joan Bainbridge Safford advised the Court that Plaintiff's counsel had not filed a notice of change of address, and therefore she couldn't contact him.

73. On September 3, 1991, Defendant Joan Bainbridge Safford requested the Court to impose travel restrictions on Plaintiff.

74. On September 3, 1991, Defendants Joan Bainbridge Safford and Fred Foreman prepared an order to be signed

by the Court.

75. On March 8, 1993, Defendant Joan Bainbridge Safford contacted Carol A. Veome, U.S. Pretrial Services, advising her that Plaintiff seemed unsupervised.

76. In January, 1995, Defendant Tony Morton, aka Tony Smith, denied Plaintiff travel to California for the purpose of preventing him from speaking on the Sixteenth Amendment.

77. In January, 1995, Defendant Tony Morton, aka Tony Smith, threatened to incarcerate Plaintiff if he spoke regarding the Sixteenth Amendment.

78. On March 30, 1995, Defendant Tony Morton, aka Tony Smith, requested the Parole Commission to modify the conditions of Plaintiff's parole to "desist disseminating\espousing that the Sixteenth Amendment was never ratified. . . ."

79. On or about March, 1996, Defendant Joan Bainbridge Safford advised Plaintiff that he should not write letters to his probation officer.

80. On August 12, 1996, Defendant Tony Morton, aka Tony Smith, started proceedings to have Plaintiff incarcerated for asserting his Fifth Amendment right to remain silent in filling out his monthly supervision reports.

81. On September 4, 1996, Defendant Tony Morton, aka Tony Smith, sought to modify the conditions of Plaintiff's release so that he could be incarcerated for asserting his right to remain silent in filling out his monthly supervision reports.

82. On February 2, 1994, Defendant Joan Bainbridge Safford prepared and forwarded a Government version of a presentence report to Sharon Stewart.

83. On April 29, 1994, Defendants Joan Bainbridge Safford and Joel D. Bertocchi, on behalf of Defendant James B. Burns, requested the Court to sentence Plaintiff to a term of probation on Count 1.

84. Between August 1, 1997 through October 16, 1998, Defendant Tony Morton, aka Tony Smith, supervised Plaintiff as if he were on probation, requiring Plaintiff to visit him at his office, visiting Plaintiff at his home, requiring Plaintiff to fill out monthly probation report forms, and restricting Plaintiff's travel.

85. On or about December 3, 1997, Defendants Tony Morton, aka Tony Smith and Raymond Raven prepared a Special Report To Request A Rule To Show Cause Why Probation Should Not Be Revoked.

86. On or about February 9, 1998, Defendants Joan Bainbridge Safford and Scott R. Lassar prepared and caused to be filed with the United States District Court A Rule To Show Cause Why Probation Should Not Be Revoked.

87. On or about October 2, 1998, Defendants Joan Bainbridge Safford and Scott R. Lassar prepared and caused to be filed with the United States District Court its Government's Response to Defendant's Fifth Amendment Claims.

88. On or about October 19, 1998, Defendants Joan Bainbridge Safford and Joel D. Bertocchi, on behalf of Defendant Scott R. Lassar, and Defendant Michael A Vlaming, attended a hearing on the Order to Show Cause in the United States District Court.

89. Defendant Michael A. Vlaming testified against Plaintiff at said hearing.

90. Defendants Scott R. Lassar, Joan Bainbridge Safford, Joel D. Bertocchi, Tony Morton, aka Tony Smith, Raymond Raven and Michael A. Vlaming, each actively sought to have Plaintiff's probation revoked and sought to have him sentenced to a term of imprisonment on Count I.

91. On or about November 9, 1998, Defendants Scott R. Lassar, Joan B. Safford and Joel D. Bertocchi prepared and caused to be filed its Government's Response to Defendant's Double Jeopardy Claims in which they contended that the sentence to probation on Count I did not violate the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

92. From on or about November 28, 1994 through April 28, 1999, Defendants Scott R. Lassar, Joan B. Safford, Tony Morton, aka Tony Smith and Kenneth Giles attempted to and did collect the aforesaid $3,703.00 costs of prosecution imposed as a special condition of probation.

93. Between August 1, 1997 and October 19, 1998, Defendant Tony Morton, aka Tony Smith refused to allow Plaintiff to travel to California.

94. Between August 1, 1997 and October 19, 1998, Defendant Tony Morton, aka Tony Smith refused to allow Plaintiff to travel to visit his children and grandchildren.

95. Between August 1, 1997 and October 19, 1998, Defendant Tony Morton, aka Tony Smith refused to allow Plaintiff to travel to Indiana to purchase gasoline and cigarettes.

96. At all times herein mentioned, the right to associate, the right to travel and the right to free speech were clearly established constitutional rights of which a reasonable person would have known.

97. At all times herein mentioned, Defendants, and each of them, had actual knowledge that they were violating Plaintiff's rights to associate, to travel and to free speech.

98. Plaintiff has been subjected because of the above recited acts, to the deprivation by the Defendants, and each of them, under color of law, of rights, privileges and immunities secured to him by the Constitution and Laws of the United States, and particularly his rights to associate, to travel and to free speech guaranteed by the First Amendment to the United States Constitution.

99. As a direct consequence and result of the acts of Defendants hereinabove complained of Plaintiff was deprived of his rights under the First Amendment to the United States Constitution, was deprived of his liberty for a substantial period of time, and suffered much anxiety and distress which worsened his previous poor medical condition.

100. Each of the acts of Defendants, and each of them, were done knowingly, maliciously, willfully and wantonly in an effort to prohibit Plaintiff for speaking about the Sixteenth Amendment and from promoting his book.

WHEREFORE, Plaintiff requests judgment be entered in his favor against these Defendants, jointly and severally, as follows:

a. $3,000,000.00 as compensatory damages for the violation of his rights under the First Amendment to the United States Constitution;

b. For the sum of $5,000,000.00 as punitive damages.

c. For an award of all costs, expenses and attorney's fees incurred in prosecuting this action;

d. For such other and further relief as the Court Deems just and equitable.

/s/ William J. Benson

William J. Benson
Plaintiff, pro se
1128 East 160th Place
South Holland, IL 60473-1718
(708) 596-3142